

content of political speech" Id. Thus, in recognition of the need to preserve editorial freedom of broadcast licensees, the Commission has consistently held that it will not investigate claims of bias in public affairs programming unless there is specific and extrinsic evidence supporting that claim. Id. at 658; Hunger in America, 20 FCC 2d 143, 150 (1969); Peter Gimbel, 3 FCC Rcd 4575, 4576 (1988).^{17/} COMINT has not introduced one item of such evidence, but rather seeks Commission review of CTSC's programming on its vague generalized claim that some programs were "left-leaning" or "unbalanced."^{18/}

^{17/} Such evidence would include testimony from "insiders" or persons with direct personal knowledge of orders from the licensee, or its top management, to deliberately present distorted programming. Peter Gimbel, 3 FCC Rcd at 4576.

^{18/} It should also be noted that COMINT's allegations would not have established a basis for Commission action under the fairness doctrine when that doctrine was Commission policy. Because of First Amendment considerations, the fairness doctrine was crafted to minimize any interference with editorial discretion. Thus, the Commission did not engage in a broad inquiry whether all of a licensee's programming was "objective" or "balanced" -- as COMINT urges; rather, its inquiry was limited to whether a licensee had provided a reasonable opportunity for contrasting viewpoints on a particular issue. Further, the Commission only intervened where the licensee acted unreasonably and, even then, the Commission recognized that the First Amendment constrained the manner in which the Commission could enforce a remedy for that violation. "The fairness doctrine does not in any way prescribe the presentation of a news item or viewpoint nor does it specify any particular manner of presentation," since such intrusion into broadcasters' discretion would be "inconsistent with our concept of a free press." Democratic National Convention, 16 FCC 2d at 655. Consequently, the Commission left to the editorial judgment of the licensee the manner in which contrasting views would be presented, even where the Commission concluded that the licensee had been
(continued...)

Commission intrusion into editorial discretion based on such vague claims would also have a profoundly chilling effect on the manner in which licensees program their stations. The Commission and the Court's have acknowledged that regulatory oversight of journalistic decisions can impede the

Inc. v. FCC, 593 F.2d 1102, 1114-18 (D.C. Cir. 1978) (en banc), or which give the regulator discretion to determine whether speech crosses an vague or uncertain line. Coates v. Cincinnati, 402 U.S. 611, 614 (1971).^{19/}

The Commission has concluded that the presentation of controversial programming is particularly chilled by the fear that allegations of "unbalanced" programming will result in the denial of license renewals. 1985 Fairness Doctrine Report, at 161-62. Unfortunately, groups such as COMINT, advocating one point of view or another, are conscious of this chilling effect, and can use the threat of complaints to the Commission, and of subsequent Commission sanctions, to pressure broadcasters to change their programming, or to give the groups air time for specific programs. Fairness Report, at note 73.

CTSC has always sought to provide fair, balanced, informative and challenging programming to its viewers. COMINT obviously disagrees with some of the points of view expressed in some of KCET's programming, and it may believe that that programming in general fails to achieve the goals which CTSC has set. However, any such failure to achieve those goals can not, consistent with the First Amendment,

^{19/} See also, The Selling of the Pentagon, where the Commission stated that "[i]t would be unwise and probably impossible for the Commission to lay down some precise line of factual accuracy -- dependant always on journalistic judgment -- across which broadcasters must not stray." 30 FCC 2d at 152.

justify the Commission interference with the operation of Station KCET sought by COMINT. As the Supreme Court has stated:

[f]or better or worse, editing is what editors are for; and editing is selection and choice of material. That editors - newspaper or broadcast - can and do abuse this power is beyond doubt, but that is no reason to deny the discretion Congress provided. Calculated risks of abuse are taken in order to preserve higher values.

CBS, 412 U.S. at 124-25.

Indeed, the alleged motive for the relief requested by COMINT, the "protection" of KCET's viewership from KCET's alleged liberal bias, is itself contrary to the First Amendment. As the Supreme Court has noted:

[T]he people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate. But if there be any danger that the people cannot evaluate the information and arguments advanced by [an advocate], it is a danger contemplated by the Framers of the First Amendment.

First National Bank v. Bellotti, 435 U.S. 765, 791-92 (1978).

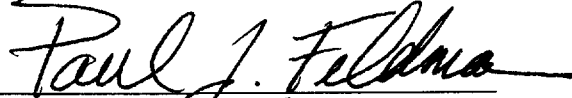
COMINT has asked the Commission, under the public interest standard, to deny KCET's license renewal or to subject that renewal to programming conditions based on the political content of some of its programs. However, as the Supreme Court has stated, "the 'public interest' standard necessarily invites reference to First Amendment principles." CBS, 412 U.S. at 122. In this case, First Amendment prin-

ciples clearly prohibit the relief requested by COMINT, and accordingly such relief cannot be granted.

Conclusion

For the reasons set forth herein, Community Television of Southern California submits that the Informal Objections of the Committee on Media Integrity must be denied.

Respectfully submitted,



Theodore D. Frank

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Dated: March 27, 1991

Attachment A

**Declaration of
Stephen Kulczycki**

1. I, Stephen Kulczycki, am Senior Vice President and Station Manager of Community Television of Southern California ("CTSC"). CTSC is the licensee of noncommercial educational television Station KCET, Los Angeles, California, and an applicant for a new noncommercial educational television station to operate on Channel *39 in Bakersfield, California. I am familiar with the dealings over the past few years between CTSC, Mr. Richard Perkins and Mr. David Horowitz, and more recently with the Committee on Media Integrity ("COMINT"). I am also familiar with COMINT's Informal Complaint against CTSC's pending application for renewal of license of Station KCET, COMINT's Reply to CTSC's Opposition to COMINT's complaint, and COMINT's Informal Objections to the grant of CTSC's application for the Bakersfield license. This Declaration is prepared in support of CTSC's Opposition to COMINT's Informal Complaint in Bakersfield.

2. CTSC is a California corporation organized under the nonprofit corporation statutes of the State of California. It is governed by a 55 person Board of Directors (the "Board"). Five members of the Board are ex officio and the others are selected by the Board itself. The five ex officio members of the Board are the President of CTSC, the Chair of the KCET Corporate Partners (a support group), the Chair of the KCET Affiliates (a support group), the Chair of KCET's Women's Council and the Chair

of the KCET Community Advisory Board. Elected members of the KCET Board of Directors serve for three year terms and generally are eligible to serve for two consecutive terms. Members of the Board are expected to provide expertise and services to CTSC in the manner most appropriate for the particular director; while many actively assist in fundraising, a majority does not help in that way. In consultation with KCET staff, the Board of Directors prepared the attached "Guidelines for Governance of CTSC" which sets forth their responsibilities as Board members.

3. The Board operates largely through its committees. The standing Committees of the Board are the Executive Committee, the Finance Committee, the Nominating Committee, and the Community Relations Committee. The Executive Committee has the full authority of the Board of Directors when the Board is not meeting, to the maximum extent permitted under California law. Some of the other committees presently operating are the Audit Sub-Committee of the Finance Committee, the Compensation Sub-Committee of the Executive Committee and the Strategic Planning Committee. From time to time, additional ad hoc committees are created to address specific matters. The Board of Directors meets every other month, and the Executive Committee meets in alternative months. At times, special meetings of the Board or Committees are called to deal with particular matters. In addition to its regular bi-monthly schedule, the Board also devotes an entire meeting in the fall to discuss the station's

current and upcoming productions as well as its new broadcast schedule.

4. At each meeting, the Board is briefed and invited to comment on the station's programming plans and developments, is advised of developments in the industry which might affect the station, is provided with financial information concerning the station, is given comprehensive reports of press coverage of the station, and is briefed by members of the Board and station management on other operational items. Board members are free to raise any point they wish concerning any item that is discussed or raised during the Board meeting and can request that other matters be added to the agenda for Board consideration. It has been my experience that when members of the Board are concerned with any aspect of the manner in which the station is run, they have not been hesitant to raise their concerns.

5. The Board selects senior management and, through the Compensation Sub-Committee and Executive Committee, reviews their duties. For example, my approved job description provides that I am responsible to "acquire and schedule programs of the highest

quality." "Develop a broad and diverse schedule of programs"

reviews and approves the compensation schedule for other employees.

6. The Chair of the Community Relations Committee regularly attends meetings of CTSC's Community Advisory Board to act as a liaison between the CAB and the Board. The Community Advisory Board consists of individuals drawn from Station KCET's service area, and includes active community leaders from various groups and interests which make up the incredibly diverse Los Angeles area. Members of the CAB are selected on the basis of their abilities and willingness to serve KCET and provide the CAB with a reasonably representative cross-section of that cultural, ethnic and socio-economic diversity. The Community Advisory Board annually prepares a comprehensive review of Station KCET's programming and program priorities. This review is submitted to the Board and management for their consideration and comment. See Exhibit 2 for the most recent such report. CTSC also works with the Community Advisory Board in connection with its community outreach activities. For example, the CAB recently was instrumental in organizing a special event held at the Ambassador Auditorium to highlight Black History Month. The event was attended by approximately 300 civic leaders and featured a presentation of the Childrens Television Workshop "Sesame Street" Race Relations Curriculum, a performance by the Crenshaw Community Choir, an address by the President of KCET and the

outside Auditors and assumes responsibility for insuring that recommendations of the auditors are, where appropriate, implemented. The Finance Committee also has initial review and approval responsibilities over the annual budget process. After approval by the Finance Committee, the budget is reviewed and approved by the Executive Committee before being submitted to the full Board for adoption at the Annual Meeting of the Board.

9. CTSC obtains a significant amount of information from the public concerning its programming. It regularly receives a substantial volume of mail and telephone calls from its viewers and members (approximately 135,000 contacts each year, with some 30% of those dealing specifically with programming). CTSC employs a staff of four full-time viewer service representatives to take those calls and respond to correspondence. When appropriate, calls and letters are referred to station management, including the Director of Broadcasting and me, for response. The number and substance of all programming-related calls and letters are summarized in regular periodic reports that are distributed to and reviewed by station programming management. As a noncommercial station which is heavily

feedback received during fundraising efforts and directly from its viewers. However, KCET also conducts a formal ascertainment of community needs and problems, interviewing several hundred community leaders during the year. It also employs its Community Advisory Board to evaluate the programming needs of the community as a whole, as well as of various segments of the community.

10. Since July 1989 KCET has produced and broadcast a series of short programs entitled "Talk Back," in which the host reads excerpts from viewers' letters, portions of recorded viewers' phone calls are played, and/or a viewer is given up to one minute to give her/his unedited opinion about a topic relating to KCET programming. A new "Talk Back" program is broadcast every Friday evening at 7:30pm (except during pledge periods and special coverage of the Persian Gulf conflict). To date, more than 70 programs, featuring individuals representing various points of view with respect to KCET programming, pro and con, have been produced and broadcast. Mr. Horowitz was offered the opportunity to appear in "Talk Back" on behalf of himself or COMINT, but he declined.

11. In connection with preparing CTSC's Supplement, KCET's Senior Vice President and General Counsel, Glenn Schroeder, undertook a review of the CTSC records to catalogue the number

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and frequency of the contacts between Messrs. Perkins and Horowitz and CTSC. Attached as Exhibit 3 to this Declaration is a list of some of the contacts since June 1987.

I hereby declare under the penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.



Stephen Kulczycki

Date: March 25, 1991.

Exhibit 1 of Declaration

GUIDELINES FOR GOVERNANCE
OF
COMMUNITY TELEVISION OF SOUTHERN CALIFORNIA
BY ITS
BOARD OF DIRECTORS

The purpose of these guidelines is to provide the members of the Board of Directors of Community Television of Southern California ("KCET") with information which will enable

which inspire and inform viewers, enrich their lives and provide an essential and trusted service."

II. MEMBERS OF THE BOARD

A. KCET's Bylaws provide for 55 members consisting of (1) 50 members who are elected by the Board, (2) the President of KCET, and (3) those persons who are from time to time the Presidents of KCET Women's Council, Affiliates of KCET, KCET Executive Support Group and KCET Community Advisory Board. Elected Directors serve three-year terms. The terms of office of Directors are staggered so that approximately one-third of the Directors are elected at the regular meeting prior to each annual meeting with their terms of office to begin upon the termination of such annual meeting. Except for those Board members who are officers of the Board (including the Chairman and all Vice-Chairmen) and such other persons as are excepted by the Board, any elected Director who has served for two consecutive full terms of office is ineligible to serve again until a period of one year has elapsed. (There is a transitional rule applicable to Directors elected on or before July 11, 1985.)

B. The Board shall consist of those persons who have unique and valuable capabilities so that the Board as a whole will possess collective expertise, experience, fund raising potential and wisdom which will enable KCET to accomplish its

mission. The Board should reflect a cross-section of the communities and demographic groups served by KCET.

C. Persons should only be nominated and elected to membership on the Board who have evidenced a desire and capability to regularly attend meetings of the Board and those committees to which they are assigned and to assist KCET in other matters as they may be called upon to do from time to time.

III. RESPONSIBILITIES OF BOARD MEMBERS

A. Under California law, a Director of KCET must perform his or her duties "in good faith, in a manner such Director believes to be in the best interest of the organization and with such care, including reasonable inquiry, as an ordinary and prudent person in a like position would use under similar circumstances." In performing their duties, Directors are entitled to rely, in good faith, on information (including opinions, reports, statements and financial data) prepared or presented by KCET's officers and employees, legal counsel, accountants, and other professionals or experts as well as a committee of the Board as to matters within that committee's delegated authority.

B. More specifically, it is expected that Directors will accept and fulfill the following responsibilities.

1. To inform themselves about KCET.
2. To regularly attend Board meetings.
3. To participate, if requested, in committee work or to perform a specific Board or Board committee function if the request for such work or function can be reasonably accommodated by the Director.
4. To elect a President who shall be the chief executive officer of KCET and to monitor the President's performance.
5. To review and evaluate the various functions of KCET to determine that they are consistent with its stated mission.
6. To review KCET's current and prospective financial position by reference to financial statements, cash flow charts, budgets and other relevant information and take whatever steps as may be necessary or appropriate to insure KCET's financial integrity and to select and appoint independent auditors.

IV. BOARD PROCEDURE

A. The Chairman of the Board is annually elected to office by the Board from among its members. The Chairman, together with the President, prepares the agenda for each Board meeting. The Chairman presides over each meeting of the Board.

B. The Board acts by majority vote. A quorum is one-third of the authorized number of Directors; thus a quorum is 19 Directors.

V. COMMITTEES

The roles of the standing committees of the Board of KCET are most important. Given the size of the full Board and the fact that it cannot realistically be expected as a single body to inquire into and govern well all matters which are of concern to it, it is necessary to delegate responsibilities to various standing committees and occasionally to ad hoc committees. These committees, in turn, report to the Board and request of it such action or actions as are necessary or appropriate. The members of all standing committees of the Board are elected from among the members of the Board by the Board. The chairman or co-chairman of each committee is appointed by the Board except that the Chairman of the Board is also the Chairman of the Executive Committee. A committee acts by majority vote with a

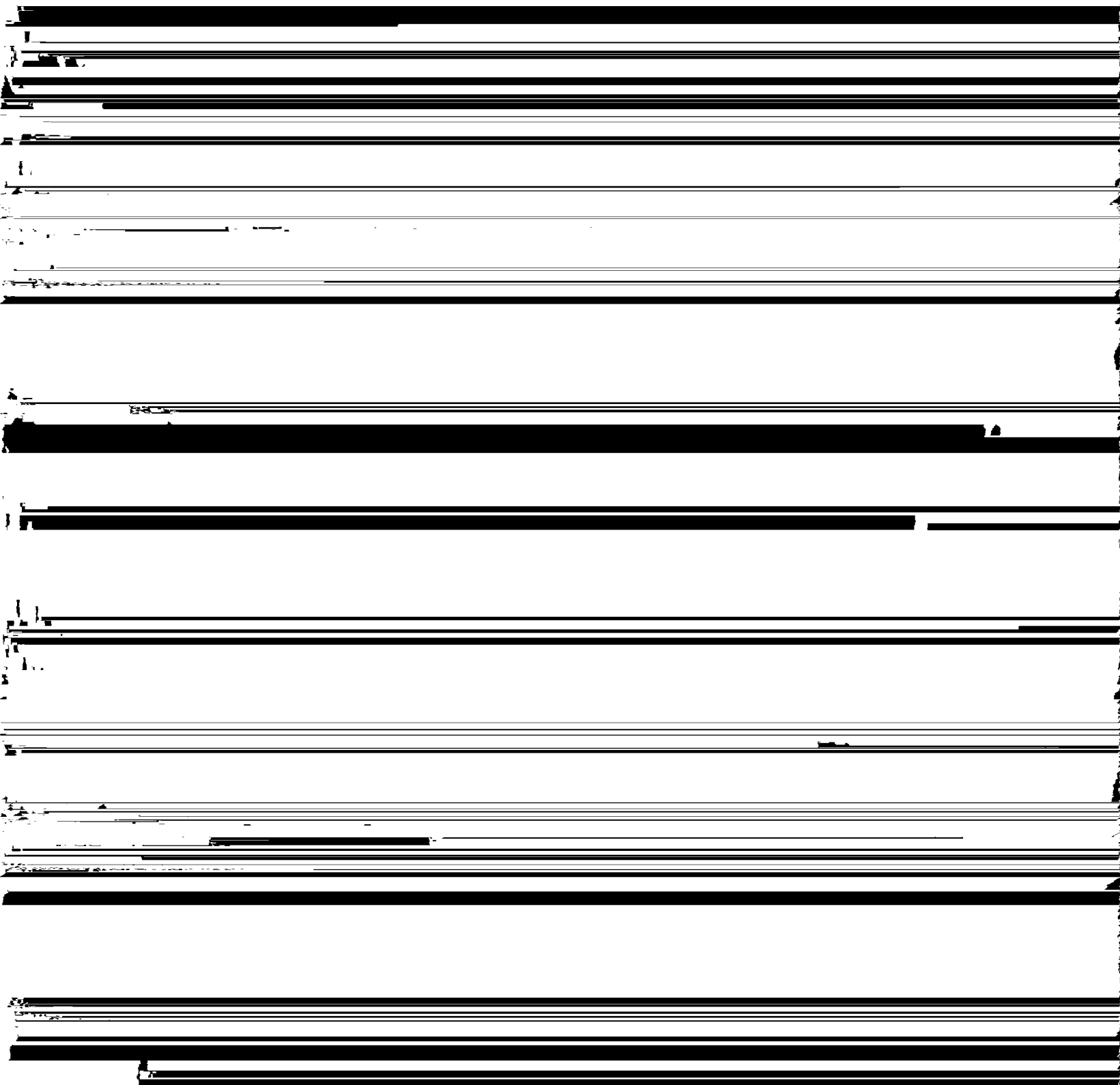
quorum being a majority of the members of the committee. A committee may appoint subcommittees.

The standing committees are:

A. Executive Committee. The Executive Committee consists of the Chairman and all Vice-Chairmen of the Board, the President, the Treasurer, if there is one, the Secretary, the Chairmen of all standing committees of the Board, and such other persons who are elected to the Executive Committee by the Board. When the Board of Directors is not in session, the Executive Committee has the authority of the full Board except with respect to (1) filling vacancies on the Board or on any committee of the

ship, developing a list of well-qualified candidates and, as
vacancies occur on the Board recommending to the Board those

potential impact of KCET's activities on the various communities and demographic groups which it serves. It is charged with formulating and reviewing plans to effect a balance in KCET's activities which will fairly and reasonably serve all such communities and groups. It also serves as a link with KCET's



VII. HONORARY DIRECTORS AND DIRECTORS EMERITUS

From time to time, the Board may select one or more individuals to be Honorary Directors or Directors Emeritus in recognition of their service to KQET and to the community. While